

Cahoy Supp. Dec. Ex. 99

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL)
ROBOT ANTITRUST LITIGATION) Lead Case No.:
-----) 3:21-cv-03825-VC
SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,) Case No.:
) 3:21-cv-03496-VC
Plaintiff,)
)
vs.)
)
INTUITIVE SURGICAL, INC.,)
)
Defendants.)
-----)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
-----)

DEPOSITION OF:
GRETA VALENTINE BERNIER
MONDAY, NOVEMBER 7, 2022
3:35 p.m. Eastern Time

REPORTED BY:
Vickie Blair
CSR No. 8940, RPR-CRR
JOB NO. 5568494

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1 Deposition of GRETA VALENTINE BERNIER, the witness,
2 taken on behalf of the Defendants, on Monday,
3 November 7, 2022, 3:35 p.m. Eastern Time, before VICKIE
4 BLAIR, CSR No. 8940, RPR-CRR.

5
6 APPEARANCES OF COUNSEL VIA ZOOM:

7
8 FOR THE WITNESS AND THE PROPOSED CLASS:

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22 ALSO PRESENT:

23 NOAH SUSZCKIEWICZ, Videographer
24
25

1	Q	About how long did your meeting with	12:40:48
2		Mr. Bateman last?	12:40:51
3	A	An hour.	12:40:51
4	Q	Was anyone there apart from you and	12:40:53
5		Mr. Bateman?	12:41:01
6	A	No.	12:41:01
7	Q	Did you look at any documents in	12:41:02
8		preparation for today's deposition?	12:41:04
9	A	No.	12:41:05
10	Q	Have you ever spoken with anyone from the	12:41:06
11		Franciscan Alliance hospital network in Indiana?	12:41:11
12	A	No.	12:41:17
13	Q	Have you ever spoken with anyone from	12:41:17
14		Larkin Community Hospital in Miami?	12:41:20
15	A	No.	12:41:22
16	Q	Are you currently employed by Valley	12:41:22
17		Medical?	12:41:28
18	A	Yes.	12:41:28
19	Q	What is your role at Valley?	12:41:28
20	A	I am a colorectal surgeon at Valley, and I	12:41:32
21		am the chief of surgery for the medical staff office.	12:41:37
22	Q	How long have you been employed by Valley?	12:41:42
23	A	Three years and three months.	12:41:48
24	Q	How long have you been chief of surgery at	12:41:52
25		Valley?	12:41:54

1	A	Yes.	12:48:48
2	Q	Do you consider whether a surgical robot	12:48:49
3		is available at the time you need in deciding what	12:48:56
4		surgical modality to use?	12:49:00
5	A	No.	12:49:01
6	Q	You mentioned previously that your	12:49:01
7		preference for all patients is to offer a robotic	12:49:13
8		approach.	12:49:17
9		Why is that?	12:49:18
10	A	Because, in my experience, they have less	12:49:20
11		pain, quicker return of bowel function, shorter length	12:49:27
12		of stay, and, in general, recover better. I also find	12:49:33
13		that my dissection can be more accurate and my	12:49:41
14		visualization or exposure of the things that I need to	12:49:47
15		see is significantly better with the robotic approach	12:49:49
16		than the laparoscopic approach.	12:49:54
17	Q	Is -- is each of benefits that you just	12:49:57
18		described that you have experienced for robotic	12:50:06
19		assisted procedures, are you comparing them both to	12:50:10
20		open and laparoscopic procedures or are there some	12:50:13
21		aspects of those benefits that are equivalent between	12:50:16
22		laparoscopic and robotic assisted?	12:50:23
23	MR. BATEMAN:	Objection to form.	12:50:25
24	THE WITNESS:	They are not equivalent.	12:50:26
25		There is, I would say, an interval	12:50:27

1 improvement each one, so there's a significant 12:50:30
2 improvement between -- in doing any kind of what we 12:50:33
3 would call minimally invasive surgery, meaning 12:50:36
4 laparoscopic or robotic over open; but, beyond that, 12:50:40
5 there are advantages of using the robotic system beyond 12:50:43
6 straight stick laparoscopy. 12:50:46

7 BY MR. CHAPUT: 12:50:48

8 Q When you say that your dissection can be 12:50:54
9 more accurate, what do you mean by that? 12:50:57

10 A Because of the -- the visibility and the 12:50:58
11 way that the robotic instruments are wristed and can 12:51:02
12 move, we can -- I can be more fine tuned with my 12:51:07
13 dissection than using laparoscopic instruments which 12:51:12
14 just open, close, and rotate. 12:51:14

15 Q You also mentioned that visualization is 12:51:18
16 significantly better with the robotic approach than 12:51:22
17 with a laparoscopic approach. 12:51:24

18 What do you mean by -- what do you mean by 12:51:25
19 that? 12:51:30

20 MR. BATEMAN: Objection to form. 12:51:30

21 THE WITNESS: So it's a 3D camera instead 12:51:34
22 of 2D, it -- I just think the optics in general are 12:51:37
23 better, and then I also have the benefit of being able 12:51:41
24 to control it myself; whereas in a laparoscopic case, 12:51:43
25 an assistant would be holding the camera and showing me 12:51:48

1 what they think I should see, which takes a lot of 12:51:51
2 understanding on the assistant's part and ability to 12:51:55
3 take direction. 12:51:58

4 In a robotic case, I control exactly what 12:51:59
5 I'm looking at, and the camera is better. 12:52:01

6 BY MR. CHAPUT: 12:52:03

7 Q Have you found that the proportion of 12:52:15
8 surgeries that you perform using a robotic approach has 12:52:17
9 increased over time or has it largely been consistent 12:52:21
10 since you started your practice? 12:52:27

11 A It increased significantly when I moved 12:52:29
12 from the university to Valley. 12:52:31

13 Q Why is that? 12:52:32

14 A Access -- well, two things, I'm sorry, 12:52:33
15 access and the Xi over the Si. 12:52:39

16 Q By access, do you -- do you simply mean 12:52:42
17 the availability to book a robotic -- a robot equipped 12:52:46
18 operating room? 12:52:52

19 A Correct. 12:52:52

20 Q Why has your utilization of the da Vinci 12:52:53
21 system increased with the Xi compared to the Si? 12:53:00

22 A Because most of the operations that we do 12:53:02
23 require operating in what we call multiple quadrants, 12:53:07
24 so not just pointed into one location in the abdomen, 12:53:12
25 the Xi is able to move through multiple quadrants in a 12:53:17

1 way that the Si couldn't, or couldn't without 12:53:20
2 significant cumbersome adjustments. 12:53:22

3 When I was operating with the Si, I would 12:53:27
4 have to do half of the operation laparoscopically in 12:53:28
5 the other quadrants and then switch to using the robot 12:53:33
6 in the portion with the most complex dissection or deep 12:53:36
7 in the pelvis is the most common reason for a 12:53:40
8 colorectal surgeon; and, with the Xi, I can do it all 12:53:44
9 with one platform instead of using two different 12:53:47
10 systems for one case. 12:53:50

11 Q I see. 12:53:52

12 Have you found that you're able to 12:53:54
13 complete your procedures more efficiently using the Xi 12:53:56
14 than with the Si? 12:54:00

15 A Yes. 12:54:01

16 MR. BATEMAN: Objection to form. 12:54:01

17 BY MR. CHAPUT: 12:54:01

18 Q Does it -- has -- has using the Xi reduced 12:54:02
19 the amount of operating time necessary? 12:54:05

20 MR. BATEMAN: Objection to form. 12:54:10

21 THE WITNESS: Over the Si? 12:54:13

22 BY MR. CHAPUT: 12:54:14

23 Q Yes. 12:54:16

24 A The Xi has reduced the time as compared to 12:54:17
25 the -- or increased the efficiency as compared to the 12:54:20

1 Si. 12:54:24

2 Q Are there any surgeries that you perform 12:54:24

3 exclusively using one modality and not the others? 12:54:37

4 A No. 12:54:47

5 Q Does Valley Medical have any policies or 12:54:51

6 procedures that inform your decision of which modality 12:55:05

7 to recommend to your patients? 12:55:10

8 A Does Valley have any policies or 12:55:12

9 procedures that affect the modality I recommend? No. 12:55:17

10 Q Does Valley Medical have any policies or 12:55:21

11 procedures with respect to how you obtain informed 12:55:27

12 consent from your patients? 12:55:32

13 A Yes. 12:55:34

14 Q What are those policies or procedures? 12:55:39

15 A We have a standardized consent form, 12:55:42

16 originally on paper, recently switched to an electronic 12:55:47

17 version that I'll use for all procedures, and then we 12:55:51

18 add our surgical details, and that consent must be 12:55:55

19 signed within 30 days of the operation. 12:56:00

20 Q When you are obtaining informed consent 12:56:06

21 from your patients, do you explain to them the 12:56:10

22 comparative risks and benefit of different surgical 12:56:16

23 modalities? 12:56:20

24 A Yes. 12:56:20

25 Q Does Valley Medical calculate the cost of 12:56:21

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF LOS ANGELES)

4 I, Vickie Blair, CSR No. 8940, RPR-CRR, in
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly sworn
8 to testify as to the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken before me
11 at the time and place therein set forth, and was taken
12 down by me stenographically and thereafter transcribed
13 via computer-aided transcription under my direction and
14 is a true record of the testimony given;

15 I further certify I am neither counsel
16 for, nor related to, any party to said action, nor
17 interested in the outcome thereof;

18 IN WITNESS WHEREOF, I have hereto
19 subscribed my name this 20th day of November, 2022.

20

21

22

23

24

25



Vickie Blair, CSR No. 8940, RPR-CRR